

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:

Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
Petition of the Minnesota Public Utilities)	
Commission)	DA 03-3594
for Agreement With Changes in Definition)	
of Service Areas for Exchanges Served by)	
CenturyTel, Citizens Telecommunications)	
Company, Frontier Communications of)	
Minnesota, Inc., Mid-State Telephone)	
Company, Scott-Rice Telephone, United)	
Tel Co of Minnesota (UTC of Minnesota))	
Federated Telephone Company, Melrose)	
Telephone Company, Winsted Telephone)	
Company (TDS Telecom), Eckles)	
Telephone Company (Blue Earth Valley)	
Telephone Company), Lakedale Telephone)	
Company, and Farmers Mutual Telephone)	
Company.)	

To: Chief, Wireline Competition Bureau

COMMENTS OF MIDWEST WIRELESS COMMUNICATIONS, LLC

Midwest Wireless Communications, LLC ("Midwest"), by counsel and pursuant to the Commission's *Public Notice* dated April 12, 2004,¹ provides comments in support of the petition of the Minnesota Public Utility Commission ("MPUC") seeking FCC concurrence with the MPUC's decision to redefine the service areas of the above-referenced incumbent local exchange

¹ *Parties Are Invited To Update The Record Pertaining To Pending Petitions For Eligible Telecommunications Carrier Designations*, DA-04-999 (April 12, 2004). These comments are filed with the Chief, Wireline Competition Bureau, who has delegated authority pursuant to 47 C.F.R. Section 54.207(e); see also, *Wireline Competition Bureau Initiates Proceeding to Consider the Minnesota Public Utility Commission's Petition to Redefine Rural Telephone Company Service Areas in the State of Minnesota*, (Public Notice) DA 03-3594 (released November 7, 2003).

carriers' ("ILECs") as provided under Section 54.207 of the Commission's rules, 47 C.F.R. Section 54.207.

I. THE SCOPE OF A SECTION 54.207 PROCEEDING IS LIMITED

This case is solely about whether the FCC should concur with the MPUC's decision to redefine affected rural ILEC service areas so that each wire center is a separate service area. This case is not about defining Midwest's ETC service area. That decision has been made by a final and unappealable order.

In its decision, which is now a final and unappealable order, the MPUC determined that it was in the public interest to grant ETC status to Midwest throughout its FCC-authorized service area in rural Minnesota.² In so doing, the MPUC exercised statutory authority that lies solely with the state. Determinations as to the contours of a competitive ETC's service area and whether the public interest would be served by Midwest's designation are solely within the province of a state's jurisdiction to designate ETCs under Section 214(e)(2). Thus, unless it has relinquished jurisdiction to the FCC, only a state may to determine whether it is in the public interest to designate a competitor such as Midwest in all or part of an ILEC's service area. This authority necessarily extends to deciding whether to designate a competitor in a less than an entire ILEC wire center.

The MPUC's petition to the FCC follows the framework set up by Congress, in Section 214(e) of the 1996 Act, 47 U.S.C. Section 214(e), and the FCC in Section 54.207 of the rules. The state and the FCC must agree on any redefinition of ILEC service areas made necessary by the designation of a competitive ETC in an area that is different from an ILEC study area. The

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The sole exception is the Rochester, MN MSA, where designation was neither requested nor made.

scope of a redefinition proceeding under Section 54.207 is limited to criteria articulated by the Federal-State Joint Board on Universal Service ("Joint Board").

The Joint Board's stated concerns about redefining rural ILEC service areas have been in place for a number of years and have been followed in numerous cases throughout the country, including the Midwest proceeding in Minnesota (Docket PT-6153 /AM-02-686).³ Under Section 54.207, neither the FCC nor the state has authority to dictate the service area redefinition of a rural ILEC. The parties must reach agreement.

II. THE FCC SHOULD FOLLOW THE MPUC'S WELL CONSIDERED DECISION TO REDEFINE THE AFFECTED RURAL ILEC SERVICE AREAS

Concerns raised by the Joint Board focus on whether the proposed redefinition of rural ILEC service areas would, (1) permit Midwest to intentionally or unintentionally cream skim low-cost areas of affected rural ILECs, (2) impose any undue administrative burdens on affected rural ILECs, or (3) properly recognize rural ILECs' status as rural telephone companies. These concerns were thoroughly considered in both the Administrative Law Judge's ("ALJ's") Recommended Decision and in the MPUC's final order. In the designation proceeding, the ALJ developed a massive record, including full discovery, five days of hearings, and two rounds of briefs. Exceptions and reply exceptions were filed with the full Commission, which itself held over three hours of oral argument and rendered a complete decision on the matter.⁴ Its decision was not appealed.

In response to the *Virginia Cellular*⁵ and *Highland Cellular*⁶ decisions, the MPUC noticed and held a further proceeding to consider whether these two cases would cause the

³ Federal-State Joint Board on Universal Service (Recommended Decision), 12 FCC Rcd 87 (Jt. Bd., 1996).

⁴ The MPUC attached a copy of the final order to its Petition, which was filed on July 8, 2003.

⁵ *Virginia Cellular, LLC*, 19 FCC Rcd 1563 (2004).

agency to reconsider its service area redefinition decision. In its Special Meeting of May 11, 2004, after various interested parties presented their positions, the MPUC determined that it would not revisit its previous decision and would instead urge the FCC to concur with its service area redefinitions as set forth in its order.⁷

Under Section 214(e) of the Act, the MPUC is charged in the first instance with determining whether a competitive ETC should be designated and for what service area that designation should apply. The MPUC has performed its duty in a complete and well-considered proceeding, pursuant to which all parties have had full opportunity to air their views. No affected rural ILEC made any credible showing as to how it would, or could, be harmed, and nothing in either *Virginia Cellular* or *Highland Cellular* has persuaded the MPUC to alter its decision to define Midwest's service area coterminous with its FCC-licensed service boundary.

The FCC should concur with the MPUC's proposed service area redefinition because the MPUC is in the best position to determine what is best for its rural citizenry. The state's closer oversight of telephone companies under its jurisdiction and its historical view of the state's telecommunications needs and infrastructure are substantial reasons why Congress delegated to state commissions in the first instance authority to perform ETC designations.

Here, the MPUC has found that disaggregation of high-cost support is sufficient to protect rural ILECs from competitors receiving uneconomic support levels, even unintentionally. Those that have disaggregated support are protected from uneconomic competition and those that have not disaggregated may still do so pursuant to 47 C.F.R. Section 54.315. Under the Path 2

⁶ *Highland Cellular, Inc.*, FCC 04-37 (released April 12, 2004).

⁷ See Supplemental Comments of the Minnesota Public Utilities Commission filed in this proceeding on May 14, 2004 at pp. 1-2.

option set forth in 47 C.F.R. Section 54.315(c), rural ILECs may disaggregate into an unlimited number of sub-wire center cost zones to prevent uneconomic support from flowing to competitors.

The FCC is bound by statute to respect a state's judgement, made pursuant to 47 U.S.C. Section 214(e)(2), with respect to whether it is in the public interest to designate a competitor as an ETC in specific rural ILEC service areas. In addition, it should respect the state's judgement regarding whether an ILEC service area should be redefined pursuant to Section 214(e)(5), especially where the matter has been litigated in a hearing. Deferring to a state's expertise would be consistent with the FCC's recent request that the Virginia Corporation Commission examine the FCC's proposed service area redefinition of Virginia Cellular "based on its unique familiarity with the rural areas in question."⁸

III. CONCLUSION

The MPUC has properly considered and reaffirmed its decision to redefine rural ILEC service areas along wire center boundaries. FCC concurrence is entirely appropriate. Midwest respectfully requests the FCC to promptly issue an order concurring with the MPUC's redefinition of the above-captioned ILEC service areas so that Minnesota's rural consumers can begin to see the benefits of high-cost support at the earliest possible date.

Respectfully submitted,

MIDWEST WIRELESS COMMUNICATIONS, LLC

By: _____/S/_____
David LaFuria
Steven M. Chernoff
Its Attorneys

⁸ *Virginia Cellular, supra* at 1582.

Lukas Nace Gutierrez & Sachs, Chartered
1111 19th Street, N.W.
Suite 1200
Washington, DC 20036
(202) 857-3500

May 28, 2004

CERTIFICATE OF SERVICE

I, Kimberly Verven, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this 28th day of May, 2004, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing *Comments of Midwest Wireless L.L.C.* filed today to the following:

Mike Hatch, Esq.
Karen Finstad Hammel, Esq.
Attorneys for State of Minnesota
445 Minnesota Street, #1100
St. Paul, Minnesota 55101-2127

Richard J. Johnson, Esq.
Moss & Barnett
4800 Wells Fargo Center
90 S Seventh Street
Minneapolis, MN 55402-4129

Karen Brinkman, Esq.
Tonya Rutherford, Esq.
Latham & Watkins
Suite 1000
555 Eleventh Street, N.W.
Washington, D.C. 20004-1304

Caressa D. Bennet, Esq.
Rebecca L. Murphy, Esq.
Bennet & Bennet, PLLC
1000 Vermont Avenue, NW, 10th Floor
Washington, D.C. 20005

James Rowe, Esq.
Alaska Telephone Association
201 East 56th, Suite 114
Anchorage, Alaska 99519

Lawrence E. Sarjeant, Esq.
Indra Sehdev Chalk, Esq.
Michael T. McMenamin, Esq.
Robin E. Tuttle, Esq.
United States Telecom Association
1401 H Street, NW, Suite 600
Washington, D.C. 20005

Kevin Saville, Esq.
Attorneys for Citizens Telecommunications
Company of Minnesota, Inc. and
Frontier Communications of Minnesota, Inc.
2378 Wilshire Boulevard
Mound, Minnesota 55364

Eric Einhorn, Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-C360
Washington, D.C. 20554

Diane Law Hsu, Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW, Room 6-A360
Washington, D.C. 20554

Anita Cheng, Assistant Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-A445
Washington, D.C. 20554

Thomas Buckley, Esq.
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW, Room
Washington, D.C. 20054

_____/S/_____
Kimberly Verven